/373 cont./

682 And they express a climate completely different from private vengeance. And here are some examples:

175 683 /The following seven paragraphs are in small type in the original source./ Ammern, 1232 Heg.: 1817. A specialist in the examination of wounds (we would say that he evaluates "incapacities") sets the idemnity, leqṣaç, corresponding to the loss of an eye. It is a sum of money, it is not the eye of the guilty one!

Ammern, 1167 Heg.: 1754. A father, afflicted by a prodigal and quarrelsome son, settles 80 o. for his account and henceforth disengages himself, min jamf^{c} umur as-sufahâ' wa jamî^{c} il-achrâr, if henceforth the young man should occasion: youthful follies, wounds and bruises inflicted upon others, and for which the old man indemnifies a series of victims for the past, by contract in a way.

175 681 Ammern, 1166 Heg.: 1753. A divorced woman has been sentenced to a heavy fine, 30 o. A third party pays it for her, not without acquiring, it seems, certain rights over the guilty one. In any case, from then on, he relieves her of all responsibility, "as the jackal is relieved of that for the blood of Joseph," picturesque Biblical reminder.

175 683 Tasa, 1242 Heg.: 1827. An expert evaluates the wound, the result of an "act of destiny" inflicted by Lh'sen Ubaha (a euphemism to designate the guilty one), "concerning the head of the old Sâid Wakrim." Valuation.

Fatwa of the son of sidi Lh'sen u Tiqqi (1147 Heg.: 1735). The rate applicable to a facial wound is evaluated at 1/12 of the dîâ, in other words 72 mithqâl-s; in coin, ^{c}abbâsîya. This by reference to Khalîl!

175 682 [623] [628] An agreement of 1274 Heg.: 1858 between the jemâa-s of the villages of Tamt'ddit, Tagunit, Tinwalin, Tamezgurt (the Imt'ddan tetrapolis). The piece is written by the hand of the marabout of Assttif, sidi Abdallah b. Ah'med. It is agreed that the dîâ for voluntary or involuntary homicide is 100 mithqâl-s.

175 /373 cont./
685 "Note," taqyîd, of the fine imposed by the moqaddem of the
683 Idma on an individual who stole some almonds, and whose
[634] brothers cursed the one robbed, yal^{c}anû bi-kathrat il-qabîh': 10 m. for the thief and for each insulter. Without date.

175 Therefore, to be content with what can be restored by the
671 existing documentary sources, and even taking into account transpositions inherent in the writing, one is struck by the publicist and regulatory character of this penal law. To what extent this character has prevailed over familial autonomy will be shown by the following texts.

175 /374/ /The following three paragraphs are in small type in
685 the original source./ In 1267 Heg.: 1851 the Idaw Geryun
[619] decreed that an insolvent thief must be executed by his agnates.
[634] The latter must put him to death. If they do not resolve to do this, they must release him from his fine at their own expense. The jemâa frees the agents of this execution from any payment of dîâ!

In 1276 Heg.: 1860 the a. Tasa condemned one among them to death for robbery. He was therefore executed. "But not at all by the hand of one alone, but by that of all, and without dîâ, fine or exile, being incumbent on anyone."

There still exist in Haut Seksawa old men who remember
[613] deaths of this sort. The executioner is sometimes the agnatic group,
[634] sometimes the taqbilt, or rather a subdivision of the latter, the
[619] "third," thelth.

671 In these cases at hand, the primacy of the group and of the
681 justice that it renders is curiously reconciled with an archaic concern for immunity. Penalty of public order, certainly, but one that takes precautions on the side of private vengeance and the pernicious influences of spilled blood. The ikhs, or the "close ones," here become ministers of a repression that is indeed that
[613] of the state. And not only must they thus kill one of theirs, whom their "duty" would have been to protect or avenge, but it is the state that finally absolves them of the responsibility for this murder.

/381 cont./
671 212 many dissertations to it (1).

1. For example, as-Suktânî, Ajwiba, ms. Ud ᶜAbd al-Mawlâ, pp. 139 b and 140 b (Deren).

It was undoubtedly under this aspect that the problem of the native law, outside the fiqh, was posed for them. One can thus suppose at the beginning of the sixteenth century, at the probable epoch of the generalization of the notariate in our mountains, a parallel generalization of these codifications. The very name of these elaborations — even if they replaced something older and of which we shall never have any idea, save for the chance of a lucky find — is strictly Arabic. It is the very word, designating this "equity," that our jurists sometimes oppose to the norms properly speaking among the sources of the judgment. Inçaf is a religious word, with moral sonority. If a semantic extension makes it mean "fine," then "penal tariffication," the fiction of an arbitration of the viri prudentes authorizes the transition from one notion to the other. A continuity without rupture is thus established from the orthodox thought and from its paradoxical particulars to the illicitness of purely laic legislations and certain of which, horrors! deal with personal status.
671 212 779

This is what the writers indeed felt, this is what they have always held. Even if one makes allowances for the professional scruples of the scribes, pious men with devout affectation, with sanctimonious words, this characteristic is found even in the content of these charters. Effort at attachment to orthodoxy! A text of 1142 Heg.: 1730 assimilates the compensatory tariff for robbery, practiced in Seksawa, with the canonical penalty of amputation of the hand: in fact, says our doctor, 33 onces were the value of a hand during the period of the Companions! Every time that it can be done, erudite qutoations come to legitimate the foreign communal law. A similar act of 1147 Heg.: 1735, emanating from the "cadi" sidi Moh'ammed, son of the saint of Assttif, strangely joins a quotation from Khalîl to some
175 685 671 779
175 683 671 779

/381 cont./
considerations upon the tariff for facial wounds, evaluated at 1/20 of the dîâ, that is, 72 Abbassian mithqâls-s. An opinion by a fqîh from Arghen already mentioned (act of Tinwalin of 1198 Heg.: 1784) is based conjointly on the Tuh'fa and on "what rules in the matter of ᶜorf and of ᶜâda in the country of Sous, from Fès /Fez/ to the Sous, in the matter /382/ of fines and of inçâf: and this is licit for these countrymen."

This pedantic contamination between the statute and the native law is not alone in revealing the true nature of these codifications. From what one is going to see now, even though it is only a matter of indications or traces, will doubtless stand out traits probably more authentic. The preamble of all these texts has already been noted. It is an agreement recording the unanimity of a group on its maçâlih', on its property. One knows indeed what use Malékite /Maliki/ empiricism can make of this latter notion. But enough allowance has been made for the religious impregnations of the system for one also to seek to disclose there another inspiration, that of a collective pragmatism, making sure of its legitimacy by the pursuit of its material and moral interests. This legitimacy manifests itself by social contract. This is not an accident. The contractual aspect is in fact quite striking in these testimonies. This is a mutual commitment among them on the one hand, with the promoted moqaddem on the other, to which the ikhs chiefs subscribe. It obligates them as it obligates the moqaddem, and if the latter, curiously enough, does not figure in the act it is because the consensus of the patres is deemed to entail his conditioned adherence on the basic points stipulated by the document. A contract thus becomes the law of the group.

The clauses most often constitute a veritable tariffed charter. It is rare to read, as in this document of 961 Heg.: 1583 (Idaw Geryun), that the moqaddem and his assistants "will take" what they please. Such a tone is isolated. In the totality of the cases it is a matter of a minute tariffication. A large number of these documents has been collected by us in the high valley.

[126]

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

Shooting at a man but missing him.
Collection of blood money,
Failure to attend weddings outside the commune,
Speaking to women in market.

Tribal Council

Adultery caught in the act,
Wounding,
Murder.

681 The nature of the crime also determines the fine imposed. All [685] *'urfs* on record are for the most part long lists of fines for infractions [623] of various rules. If the crime is theft, the fine also varies according [634] to the value of the object stolen. These fines are generally paid to [635] the *jemaa* having jurisdiction over the case. Thus, in Nesrat the [191] fine paid by the respondant of a division of the *ksar* to the *amghar n l'amt* accrues to the members of the superior council (Johns Hopkins University, 1956, p. 232; La Chapelle, 1929, pp. 32-33).

682 This system of jurisprudence, while functioning satisfactorily in most cases, often broke down when the crime was homicide, either because the initial act caused such immediate reprisal and developed into a war so quickly that the councillors found themselves fighting on one side or another before they could call a meeting, or because the tribal council lacked the power to enforce its decision. This 692 situation was forestalled somewhat among some of the Shluh tribes through the institution of annual "rounds of justice".

... Lorsque les cantons [districts] sont ainsi groupés de manière à constituer une véritable tribu, formée d'un certain nombre de petites unités autonomes, on procède souvent à des tournées de justice exécutées dans tout le territoire, au cours desquelles toutes les infractions commises pendant l'année sont examinées et punies. Toutes les forces de la tribu viennent alors prêter leur appui à chacun des cantons pour faciliter le règlement rapide des différends sans qu'il en résulte aucun danger pour la paix intérieure.

Cette coutume, naguère observée chez les Igezzoulen de l'Anti-Atlas occidental, est encore très vivante dans la confédération des Ida Ou Tanan, chez les Ait Ou'azzoun [545] et les Ifesfasen [544]. La tournée de justice est accomplie en suivant un cérémonial minutieusement observé. Chez les Aït Ou'azzoun, par exemple, tribu formée de quinze "afous" ou